CHAPTER 4-07-20.1
APPEALS OF EMPLOYER ACTIONS

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4-07-20.1-01. Scope of chapter.

This chapter applies to regular employees.

History: Effective November 1, 1996.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Date of service" means the date the notice was mailed or transmitted by electronic means.

2. "Employer action" means an action taken by an appointing authority that affects a regular employee through a demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal.

3. "Forced relocation" means the involuntary transfer or reassignment of a regular employee from one work location in the state to another work location in the state that requires the employee to move to a different place of residence. Telecommuting and other alternative work location agreements are not considered forced relocations.

4. "Reduction-in-force" means the loss of employment by a regular employee as a result of a reduction in funding, lack of work, curtailment of work, or reorganization.

5. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by human resource management services at the time the employer action occurred.

6. "Reprisal" means an unfavorable employment-related action taken against an applicant or employee by an appointing authority for:

   a. In good faith filing a complaint, or testifying, assisting, appealing, or participating in an investigation, proceeding, hearing, or litigation;

   b. Opposing any unlawful discriminatory practice; or

   c. Exercising the employee's rights under North Dakota Century Code chapter 34-11.1 or section 34-01-20.

7. "Waiver" means a written agreement between a regular employee and the appointing authority not to proceed with the agency grievance procedure and to permit an appeal to be made directly to human resource management services.

8. "Working days" means Monday through Friday exclusive of holidays.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010; January 1, 2024; July 1, 2026.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 34-11.1-04(5), 54-44.3-12.2

4-07-20.1-03. A regular employee may file a grievance regarding an employer action.

A regular employee may, in accordance with the respective agency's grievance procedure, file a grievance regarding demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal. A grievance must be processed through the agency grievance procedure prior to submitting an appeal to human resource management services, unless a waiver is agreed upon as provided for in section 4-07-20.1-05.

History: Effective November 1, 1996; amended effective July 1, 2004.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-04. Commencement of agency grievance procedure - Time limitations.

The employee shall begin the agency grievance procedure within fifteen working days from the date of notice of the employer action, except in the case of reprisal. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery. The employee grieving reprisal action shall begin the agency grievance procedure within fifteen working days from the date of the reprisal action. Failure to begin the procedure within time limitations may cause the employee to lose the right to appeal to human resource management services. The agency appointing authority or designee, for good cause shown, may waive the time limitations for filing a grievance. Good cause means those circumstances that reasonably and without any fault on the part of the grievant prevented the filing of a grievance in a timely fashion. In no event may a grievance be deemed timely after sixty days have elapsed from the date of the employer action.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-05. Waiver of agency grievance procedure.

A waiver of the agency grievance procedure is allowed by mutual agreement of the employee and appointing authority. The waiver must be signed by both parties within fifteen working days of the employer action. Upon obtaining the waiver, the employee may appeal directly to human resource management services in accordance with section 4-07-20.1-08. An additional fifteen working days is not available if the requested waiver is denied.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-06. A regular employee may appeal to human resource management services.

A regular employee may appeal an employer action to human resource management services if:

1. The employee has processed a grievance through the agency grievance procedure and is dissatisfied with the result;

2. The employee and the appointing authority have agreed to a waiver of the agency grievance procedure; or

3. The agency has not established a grievance procedure or has failed to respond to a grievance in a timely manner.

No other employer actions except as defined in this chapter or otherwise specifically provided by administrative rule are appealable to human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-07. Limitations for reduction-in-force appeal.

A regular employee may appeal a reduction-in-force only on the basis that the agency did not utilize a uniform comparative analysis as required by section 4-07-11-03 or that the reduction-in-force was conducted in a discriminatory manner that would violate the state's policy against discrimination as stated in North Dakota Century Code section 14-02.4-01. A former regular employee who was reduced in force may appeal a denial of re-employment only on the basis that the agency did not follow section 4-07-11-07 or that the denial of re-employment was conducted in a discriminatory manner that would violate the state's policy against discrimination as stated in North Dakota Century Code section 14-02.4-01. The assessment of whether an individual meets the qualifications necessary for successful performance shall remain with the agency.

History: Effective November 1, 1996; amended effective July 1, 2004.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-08. Procedure for appeals of employer actions to human resource management services.

1. The employee shall file the properly completed prescribed appeal form with the director, human resource management services. The appeal form must be mailed or transmitted by electronic means and must be received in the human resource management services office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure or within fifteen working days from the date of the waiver. An additional fifteen working days is not available if the requested waiver is denied. The date of service of the notice shall be considered to be the date transmitted or delivered by electronic means. The agency shall prepare a certificate of service or provide reliable means, to show proof of the date transmitted or delivered by electronic means.

2. The director, human resource management services, shall within two working days submit a written request by electronic means to the director, office of administrative hearings, to conduct a hearing on behalf of the division and shall forward a copy of the appeal form to the appointing authority.

3. The administrative law judge shall initially consider whether the appeal was filed within required time limitations. If the administrative law judge determines the time limitations have not been met, the administrative law judge shall prepare an appropriate order dismissing the

appeal, which shall be final, and provide a copy of it to the parties. The administrative law judge may, for good cause shown, waive the time limitations for filing an appeal. Good cause means those circumstances that reasonably and without any fault on the part of the appellant prevented the filing of an appeal in a timely fashion. In no event may an appeal be deemed timely after sixty days have elapsed from the date of the employer action.

4. The administrative law judge shall consider whether human resource management services has jurisdiction over the subject matter of the appeal and whether all rules and regulations were followed in the internal agency grievance process. If the administrative law judge is unable to establish whether human resource management services has jurisdiction over the subject matter of the appeal or whether the appropriate rules were followed, a hearing may be conducted to ascertain the facts related to those issues.

5. If the administrative law judge determines that human resource management services does not have jurisdiction in the matter of the appeal, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.

6. If it is determined that human resource management services has jurisdiction over the appeal, the administrative law judge shall schedule a hearing. The administrative law judge shall conduct the hearing and related proceedings, receive evidence related to the issues, prepare findings of fact and conclusions of law, and issue a final decision.

7. The administrative law judge shall notify the employee and the appointing authority of the final decision by sending each of them a copy of the findings of fact, conclusions of law, and final decision. Notification shall be accomplished in the same manner as for notification of final orders required by subsection 3 of North Dakota Century Code section 28-32-39. The parties shall implement the final decision within any time periods specified by the administrative law judge.

8. The administrative law judge shall return the completed appeal file to human resource management services by electronic means.

9. Any party to the appeal may review the recordings of the hearing by making a request to human resource management services by electronic means.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008; July 1, 2010; January 1, 2024.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2